

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of the U.S. Table of)	RM - 9911
Frequency Allocations to Designate)	
the 2500-2520/2670-2690 MHZ Frequency)	
Bands for the Mobile-Satellite Service)	

To: The Commission

**OPPOSITION BY HISPANIC INFORMATION AND
TELECOMMUNICATIONS NETWORK, INC. TO
PETITION FOR RULEMAKING OF SATELLITE INDUSTRY ASSOCIATION**

Hispanic Information and Telecommunications Network, Inc. ("HITN") opposes the Petition for Rulemaking ("Petition") that was filed on April 28, 2000 by the Satellite Industry Association ("SIA"). HITN adopts in its entirety the Opposition to that Petition that is being filed today by the National ITFS Association ("NIA"). HITN also files this individual Opposition to SIA's Petition in order to demonstrate the particular negative effects -- upon consumers, upon educational institutions, upon rural and low income populations, and upon broadband competition itself -- that would result if the Instructional Television Fixed Service ("ITFS") frequencies that are currently licensed to HITN were to be re-allocated for Mobile Satellite Service as proposed by SIA.

HITN joins with the other members of the NIA in urging the Commission to deny SIA's Petition for Rulemaking on the grounds that the result sought by SIA would violate Congression-

al and Commission policies.

I. HITN's Interest.

HITN is a private not-for-profit – Hispanic controlled – organization that was established in 1983 in order to create a network of noncommercial television facilities which would advance the educational, social, cultural, and economic aspirations of American Hispanics. HITN is an educational and cultural programming network that presently holds ITFS licenses in over 38 cities, 29 of which have already been constructed and are operational. HITN offers 24-hour distance learning programming nationally over this network and currently provides bilingual English and Spanish instructional programming to accredited elementary and secondary schools, higher education facilities, and alternative educational sites (including correctional facilities), as well as interactive distance learning services. This programming is offered for the benefit of Spanish speaking and bilingual viewers as well as persons seeking to learn Spanish. HITN operates sophisticated program production and transmission facilities including satellites and a teleport, and is an internet service provider (ISP).

HITN's present ITFS facilities include thirteen communities where it operates on the A-, B-, or G-Channel Group. HITN is, therefore, directly interested in SIA's Petition because, in these communities, the frequencies that SIA wants to appropriate are already licensed to HITN. As this Opposition will demonstrate, HITN is presently using these channels productively for educational and instructional purposes in compliance with FCC and Congressional law and policy and is actively pursuing advanced telecommunications capabilities for these facilities. HITN's networking activities exemplify the use of programming economies of scale which have long been promoted by the National Telecommunications and Information Administration (NTIA).

Ironically, however, NTIA reported at a recent conference that such minority ownership initiatives are in serious decline and in need of further support by the FCC.

II. SIA's Demands Are Contrary to Congressional and Commission Policy Objectives.

Exhibit 1, appended to this Opposition, is a chart that indicates the thirteen communities in which HITN's ITFS stations operate on the A-, B-, or G-Group channels. For each such community, the chart identifies the educational entities that receive HITN's programming at one or more receive sites. The instructional and educational programming that HITN provides to these institutions -- such as Temple Baptist School and Las Cruces High School in New Mexico, or incarcerated individuals enrolled in educational programs in New York State, or the Department of Hispanic Affairs in Orlando, Florida, or any one of numerous elementary, middle, and high schools in Colorado Springs, Dayton, Kansas City, Las Vegas, Phoenix, San Antonio, Seattle, Tulsa -- all these programs are directly vulnerable to eradication if the SIA's arrogant and narrow-minded vision of future broadband spectrum allotment were to prevail.

HITN, like the rest of the ITFS industry, is presently poised on the very brink of a most critical stage of its development, as ITFS licensees accept the Commission's filing window invitation for two-way and digital upgrade so they can provide interactive, broadband and Internet services to these and other educational institutions. This filing window opens at a time when public educational and social policy is focused more than ever before on solving the Digital Divide. At such a time, it is a cruel slap in the face for ITFS licensees to be forced to confront a demand that this educationally- and socially-important ITFS spectrum be taken away and redeployed to provide mobile satellite services for businesses.

HITN has termed the satellite industry's Petition "arrogant" because SIA's demand for

spectrum (“it is critical *to the satellite industry* in the United States for as much spectrum as possible to be available for the satellite component . . . “, SIA Petition, p. 2) willfully ignores the fact that the very frequencies SIA wants are currently allocated to other entities -- entities that are making socially valuable use of that spectrum. HITN, likewise, calls SIA’s demand “narrow-minded” because HITN and other ITFS entities are currently in the process of developing broadband capability, with the encouragement of the Commission and Congress, which would not only be competitive with satellite-based broadband but would offer that capacity to consumers and to educational institutions, many of which live or are located in rural or inner-city communities. SIA may believe its need for this spectrum is “critical,” but Congress has instructed the Commission that what is truly critical to the nation today is consumer and educational access to advanced telecommunications. With ITFS and MDS, the basics for the needed infrastructure at this truly critical “last mile” to classrooms and consumers are already in place. And, with the filings that will be made later this week, the technology to upgrade those facilities to broadband will be underway. But that infrastructure will collapse if SIA’s proposed regulatory land-grab is successful.

III. ITFS/MDS-Based Terrestrial Wireless Broadband Services Will Advance Congressional and Commission Policies.

In its January 1999 Report to Congress, in compliance with section 706 of the Telecommunications Act of 1996 [see *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 980146 (Released February 2, 1999)] (“Report to Congress”), the Commission focused on the goals that Congress has deemed most critical in the

deployment of advanced telecommunications. By permitting ITFS (and its MDS facilitators and collaborators) to retain the spectrum they have already pioneered and are now poised to take digital, the Commission will better advance the policy goals identified in that Report – to make advanced telecommunications broadband capability available to all Americans, to provide such capacity at elementary and secondary schools and classroom sites, and to provide such capacity in rural and inner-city communities and to low income consumers. An entity like HITN, once it achieves the capacity for two-way broadband data service that this current window opening encourages, will be perfectly poised to advance those policy goals – that is, unless the Commission gives in to satellite industry demands for ITFS frequencies.

As NIA has explained, the entire ITFS and MDS telecommunications sector is presently deeply involved in the process of preparing and filing applications with the Commission for two-way broadband data services during this filing window. This new capacity will allow nonprofit organizations like ITFS to expand the nature and types of educational services it provides by bringing the Internet and other broadband interactive capacity to the schools, universities, and other communities of learners it serves. For the satellite industry to propose eliminating a potential competitor such as two-way interactive ITFS/MDS land-based wireless, at the precise time the Commission's filing window is open to permit the development and deployment of this service is, at best, ill-timed and, at worst, a cynical attempt to derail a competitor industry in its early stages of development. Such a result would be directly contrary to the Congressional policies that mandate broadband deployment and that the Commission has espoused.

A. An ITFS licensee like HITN can bring broadband directly to the consumer and to elementary and secondary schools. Congress has told the FCC that it should

promote consumer access to broadband data services and that such access in America's classrooms, as quickly as possible, is essential. Educational institutions are the best, most natural, and logical site to reach the children of America who still lack access to the advanced technology needed to close the "digital divide." Even the poorest and most remote communities have at least one resource where their children can have such access – their elementary, middle and high schools, where children can acquire the skills needed for the present and the future technological world and can have access to the Internet and the tools for interactive learning.

ITFS licensees are educators. They are either the schools themselves or, like HITN, providers of educational programming and interactive learning services. These entities are perfectly placed to provide the type of access Congress envisioned – at that critical "last mile" to the schoolhouse and classroom door. It would be directly contrary to the Congressional policy so strongly expressed in the 1996 Act for the FCC to contemplate away taking the very frequencies that will permit such broadband access.

B. An ITFS licensee like HITN serves rural and inner-city low income groups.

ITFS licensees are either accredited educational institutions or not-for-profit educational institutions or organizations. Their interest in the deployment of advanced communications technology is to better serve the populations they already serve – the children and parents in the communities where their facilities are located. An entity like HITN, for example, provides its Spanish and bilingual programming to schools in many inner city as well as rural areas. Many of the children, parents, and adult students who receive its programming are from lower-income groups that may have no other opportunity to obtain access to Internet and other interactive services except from the educational receive sites to which HITN's programming is transmitted.

An entity like HITN, if it is allowed to develop the capacity and to retain its licensed frequencies, will already be in position to provide that access to these communities because its infrastructure is already in place.

C. A non-profit ITFS licensee like HITN will provide another source of competition to other industries that seek to deploy broadband services. The Commission has signaled that it wishes to promote multiple sources of broadband capacity yet, to read the SIA petition, one would think there were no technological alternatives to satellite broadband access. SIA is wrong. In its Report to Congress, the Commission stressed that it was not wedded to any one type of technology as the only means of achieving the advanced telecommunications capacity that is to be encouraged under the terms of the statute, noting:

We are encouraged that, as the demand for broadband capability increases, methods of delivering this digital information at high speeds to consumers are emerging in virtually all segments of the communications industry – wireline telephone, land-based (“terrestrial”) and satellite wireless, and cable, to name a few.

Report to Congress, p. 4.

As the Commission knows, HITN and other ITFS licensees provide essentially fixed terrestrial wireless-type service – although HITN also has some satellite transmission capability and is being distributed by EchoStar on the Dish Network. As Deborah A. Lathen, Chief of the Cable Systems Bureau, stated in a speech to the Los Angeles public affairs organization “Town Hall” in November 1999,

“we want to see multiple broadband pipes: cable modems, DSL, wireless, and satellites. The challenge is for us to make sure we are creating a regulatory environment that is technology neutral so we get as many players on the field as possible. . . . To regulate at this juncture would be to say that the market has failed before the market has been given a chance.”

Deborah A. Lathen, “The Mind’s Eye,” Speech, November 9, 1999.

Chairman Kennard, speaking to the cable industry last December, said much the same thing:

“Well, today we have less than two million broadband subscribers in America, and the most important thing that we in government can do is to create an environment to get these pipes built. Get them deployed to every business, every home, every school, every library and every hospital in American. Get them deployed fast. Broadband over cable, over DSL, over satellite and over terrestrial wireless. Once we have a network of networks, multiple broadband pipes accessible to every American . . . “

Chairman William E. Kennard, “Broadband Cable: Next Steps,” (Address before the Western Show, California Cable Television Association, Los Angeles, CA, Dec. 16, 1999).

Three months earlier, at a speech in Atlanta, Chairman Kennard addressed the issue of competition as a tool to produce faster deployment of all types of broadband capabilities. He first discussed cable and DSL access to the Internet, but did not stop there, going on to stress:

“Two pipes are not enough. We want to see multiple broadband pipes. I am convinced that we will have a wireless broadband pipe. The wireless companies are starting to show up at the broadband party. They now need the spectrum that will allow them to do high speed Internet access over a wireless platform.”

Chairman William E. Kennard, “Consumer Choice Through Competition,” Speech at the 19th Annual Conference of the National Association of Telecommunications Officers and Advisors, Atlanta, GA, Sept. 17, 1999.

Today, less than one year after that speech, that is exactly what is happening. SIA asks the FCC to wield the heavy hand of regulation to reallocate spectrum in a manner that is directly contrary to the market-oriented approach advocated in these speeches. This is hardly the time to take away half the spectrum needed by this sector of the wireless industry needs in order to “do high speed Internet access” over its existing platform – and to offer that access to the elementary, secondary, and university classrooms of America. Nor is it the time for the Commission to freeze investment in the wireless broadband pipe in its tracks by embarking on the rulemaking sought by SIA.

HITN can empathize with the spectrum needs expressed by the SIA. But the regulatory “land grab,” sought by SIA’s Petition should not be sanctioned or permitted by the FCC. This portion of the wireless broadband pipe, the portion already serving the last mile to the classroom, cannot develop or deploy its technology if its spectrum is taken away by regulatory fiat. To do so at this critical time in its development would make the inspiring quotes from these speeches and the Report to Congress ring very hollow. To even consider taking that spectrum away at this time, by agreeing to convene a rulemaking proceeding in response to SIA’s petition, would be to chill the development of this wireless Internet pipe in its first stages. The Commission must clearly reject SIA’s demand and permit wireless Internet deployment *via* two-way ITFS capability to develop as a competitive force in the public interest. SIA’s Petition should be denied.

Respectfully submitted,

**HISPANIC INFORMATION &
TELECOMMUNICATIONS NETWORK**

By

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Exhibit 1

HISPANIC INFORMATION & TELECOMMUNICATIONS NETWORK

**Communities in Which HITN's Licensed Facilities Operate on
A-, B- or G-Group Channels and
Educational Entities that Utilize HITN Programming in Those Communities**

ALBANY, NEW YORK - B GROUP - WHR-930

Alfred E. Smith Office Building, Albany, NY 12225
AT&T Kinderhook Site, Albany, NY
Burnt Hills-Ballston Lake High School, Burnt Hills, NY 12027
Coxsackie Correctional Facility, W. Coxsackie, NY 12051-0200
Department of Corrections, Albany, NY 12206
Hudson Correctional Facility, Hudson, NY 12534-0576
Hudson Valley Community College, Troy, NY 12180
Mt. McGregor Correctional Facility, Wilton, NY 12866-0996
Scotia-Glenville High School, Scotia, NY 12302

ALBUQUERQUE, NEW MEXICO - A GROUP - WLY-673

Immanuel Evangelical Lutheran School, Albuquerque, NM 87102
Temple Baptist Academy, Albuquerque, NM 87110
Victory Christian School, Albuquerque, NM 87114

COLORADO SPRINGS, COLORADO - G GROUP - WLX-361

Ellicott High School, Ellicott, CO 80831
Ellicott Junior High School, Ellicott, CO 80831
Falcon High School, Falcon, CO 80831
Peterson School, Peterson AFB, CO 80914
Peyton Jr/Sr High School, Peyton, CO 80831
Rampart School, Colorado Springs, CO 80920
Widefield Elementary School, Widefield, CO 60911

DAYTON, OHIO - G GROUP - WLX-375

Carrol High School, Dayton, OH 45432
Chaminade Julianne High School, Dayton, OH 45402
Dayton Catholic Elementary School, Dayton, OH 45406
Holy Angels School, Dayton, OH 45505
Our Lady of the Rosary, Dayton, OH 45504
University of Dayton, Dayton, OH 45469

KANSAS CITY, MO - B GROUP - WLY-709

Fairmont Spanish Magnet School, Kansas City, MO 64053
Foreign Language School, Kansas City, MO 64111
Garcia Elementary School, Kansas City, MO 64108
George Meicher Elementary School, Kansas City, MO 64130

LAS CRUCES, NEW MEXICO - G GROUP - WLY-806

Central Elementary School, Las Cruces, NM 88005
Excel/Multi-Cultural Center, Las Cruces, NM
Fairacres Elementary School, Fairacres, NM 88033
Jornada Elementary School, Las Cruces, NM 88005
Las Cruces High School, Las Cruces, NM 88005
Lynn Middle School, Las Cruces, NM 88005
MacArthur Elementary School, Las Cruces, NM 88005
Mayfield High School, Las Cruces, NM 88005
Mesilla Elementary School, Mesilla, NM 88046
Mesilla Park Elementary School, Mesilla Park, NM 88047
Ocate High School, Las Cruces, NM 88011
Tombagh Elementary School, Mesilla Park, NM 88005
Vista Middle School, Las Cruces, NM 88005
Washington Elementary School, Las Cruces, NM 88001
Zia Middle School, Las Cruces, NM 88005

LAS VEGAS, NEVADA- B GROUP - WLX-370

First Presbyterian Church Academy, Las Vegas, NM 89102
Bright Start, Las Vegas, NM 89128
Faith Lutheran Jr/Sr High School, Las Vegas, NM 89106-1928
Maranatha Academy, North Las Vegas, NM 89030
St. Francis de Salles, Las Vegas, NM 89108
The Meadows School, Las Vegas, NM 89128
Trinity Christian School, Las Vegas, NM 89104

NORFOLK, VIRGINIA - B GROUP - WNC-681

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Catholic High School, Virginia Beach, CA 23462

ORLANDO, FLORIDA - B GROUP - WLX-363

Department of Hispanic Affairs, Orlando, FL
Lake Sumter Community College, Leesburg, FL
Oak Ridge High School, Orlando, FL
UCF South Orlando Campus, Orlando, FL
Young Womens Community College, Orlando, FL

PHOENIX, ARIZONA - G GROUP - WNC-558

Alhambra High School, Phoenix, AZ 85019
Bostrum Alternative Center for Education, Phoenix, AZ 85040
Camelback High School, Phoenix, AZ 85016
Carl Hayden High School, Phoenix, AZ 85009
Central High School, Phoenix, AZ 85012
Maryvale High School, Phoenix, AZ 85033
Metro Tech Vocational Institute, Phoenix, AZ 85015
South Mountain High School, Phoenix, AZ 85040
Trevor Browne High School, Phoenix, AZ 85033

SAN ANTONIO, TX - G GROUP - WLX-704

East Central Development Center, San Antonio, TX 78223
East Central High School, San Antonio, TX 78263
East Central ISD Administrative Office, San Antonio, TX 78263
Harmony Elementary School, San Antonio, TX 78223
Instructional Technology, San Antonio, TX 78263
John Glenn Elementary School, San Antonio, TX 78263
Kindred Elementary School, San Antonio, TX 78224
Memorial High School, San Antonio, TX 78203
Mexican American, San Antonio, TX 78201
Oak Crest Middle School, San Antonio, TX 78263
Olmos Elementary School, San Antonio, TX 78213
Pecan Valley Elementary School, San Antonio, TX 78222
Salado Middle School, San Antonio, TX 798222
Sinclair Elementary School, San Antonio, TX 78222

SEATTLE, WASHINGTON - G GROUP - WLX-546

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Holy Family School, Seattle, WA 98106
Our Lady of Fatima School, Seattle, WA 98199
St. George School, Seattle, WA

TULSA, OKLAHOMA - G GROUP - WLX-534

B. T. Washington High School, Tulsa, OK 74106
Central High School, Tulsa, OK 74127
East Central High School, Tulsa, OK 74128
Edison Middle and High School, Tulsa, OK 74128
Eisenhower International School, Tulsa, OK 74114
McLain High School, Tulsa, OK 74126
Memorial High School, Tulsa, OK 74135
Nathan Hale High School, Tulsa, OK 74129
Webster High School, Tulsa, OK 74101
Will Rogers High School, Tulsa, OK 74112

Certificate of Service

I hereby certify that a copy of the foregoing Opposition of Hispanic Information & Telecommunications Network was mailed this 28th day of August, 2000 to the following:

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